UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 98-09562-W
Marilyn Davenport Smith,	**ORDER**
Debtor.	Chapter 13

THIS MATTER comes before the Court for emergency hearing upon the Motion to Reconsider Lifting Stay (the "Motion") filed by Marilyn Davenport Smith ("Debtor"). In the Motion, Debtor asks the Court to vacate an Order entered on July 18, 2000 granting Countrywide Home Loans ("Creditor") relief from the automatic stay, reinstate the automatic stay, and enter an order allowing for the resumption of payments to the Chapter 13 Trustee for prepetition arrearage.

To place this motion in context, the Court notes a brief history of this case. On January 19, 2000, Debtor and Creditor agreed to a Settlement Order to resolve Creditor's motion for relief from the automatic stay. In the Settlement Order, Debtor agreed to pay Creditor (1) a lump sum on the date of the Order, (2) regular monthly mortgage payments, and (3) additional monthly payments of $82.52. In the event Debtor defaulted, Creditor was entitled to relief from the stay upon submitting an affidavit of default and the Court entering an order. On July 18, 2000, the Court entered an Order granting Creditor relief from the stay after receiving Creditor's affidavit indicating that Debtor failed to pay her regular monthly mortgage payments as well as the additional monthly payments required by the Settlement Order. On July 17, 2001, the Court entered a consent Order (the "Resumption Order") allowing the resumption of payments by the Trustee as Creditor agreed to provide Debtor another opportunity to make her postpetition

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payments. The Resumption Order did not reinstate the stay. In the event Debtor defaulted under the terms of Resumption Order, the Resumption Order provides that Creditor is permitted to proceed with the foreclosure of its mortgage on Debtor's property immediately upon the Court's receiving an affidavit of noncompliance. On January 30, 2002, Creditor submitted an Affidavit of Default indicating that Debtor was in default of the Resumption Order.

Creditor appeared at the emergency hearing and objected to the Motion. Creditor indicated that Debtor was actually two payments behind before she placed in default. Further, Debtor did not appear at the hearing and offered no evidence that would constitute grounds for granting the Motion.

Given the context of Debtor having repeated opportunities to cure her default yet failing to comply with her agreements, the Court denies the Motion with prejudice to bar Debtor from filing a similar motion in the future. Indeed, Debtor has not paid Creditor what she agreed to in her Chapter 13 Plan, the parties' Settlement Order, and the parties' Resumption Order, and, despite requesting an emergency hearing, she offered no evidence to support her Motion. In light of these facts, the Court must deny the Motion.

The Court further offers this Order as a general caution to other debtors and their counsel. Most motions to reconsider relief from the automatic stay that cannot demonstrate a secured creditor's error in recording payments do not meet the requirements of Federal Rules of Civil Procedure 59 and 60 and therefore should be denied as a matter of law. However, the Court's general procedure for addressing §362 motions in Chapter 13 cases often provides debtors multiple opportunities to cure defaults and retain collateral such as homes or automobiles that are essential to continued performance under a confirmed plan. In fact, many secured creditors

voluntarily agree to allow debtors these additional opportunities. At some point, though, these reasonable opportunities end, especially when the secured creditor opposes the relief sought. Debtors who have enjoyed such numerous opportunities to cure their defaults under their plans, agreements, and court orders should not file repeated petitions with the Court for additional opportunities based merely upon equitable arguments or as a last ditch effort. Such repetitive and often untimely requests, particularly those requesting an emergency hearing, create a burden on the Court, the parties, and the Chapter 13 Trustee, and may require the Court to award costs and expenses or order sanctions against a debtor and her counsel. See also In re Basnight, C/A No. 99-09714-W slip op. (Bankr. D. S.C. Apr. 19, 2002).

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 31, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

BNC

AUG 1 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE, J. Kay Countrywide

BETINA MOBLEY

Deputy Clerk